

Town of Concord
Natural Resources Commission
141 Keyes Road
Concord, MA 01742

Wetlands Setback Policy

Unless proven otherwise by the applicant, the Natural Resources Commission (NRC) shall presume that any new structure within 50 feet of a wetland resource area, or any activity within 25 feet of any wetland resource area, will have a significant adverse impact on the adjacent wetland and should not be permitted.

Purpose of Policy

The NRC has found that activity in the 100-foot buffer zone adjacent to wetland resource areas poses a serious threat to the ability of such areas to fully protect the eight public interests identified in the Massachusetts Wetlands Protection Act (M.G.L. Ch. 131 §40). As a result, the NRC strongly discourages **all** new structures within 50 feet of wetlands and all activity within 25 feet of wetland resource areas. Protecting this portion of the 100-foot buffer zone will reduce impacts to adjacent wetland resource areas.

Basis of Policy

Scientific research, and the NRC's own experience in reviewing a wide variety of projects, demonstrates that alteration within the buffer zone consistently results in destructive effects on the wetlands themselves. These include, but are not limited to, disturbance of natural vegetation along the wetland edge, pollutant run-off, fill material, and other substances deposited into wetland resource areas, stockpiling or dumping of materials or debris which migrate over time into wetlands, and wildlife habitat disturbance, including to nesting sites and corridors that are important to wetland-dependent species. The NRC has also noted a tendency on the part of many project proponents to design projects to the absolute limit of the wetland boundary. In most instances it is vital to protect the buffer zone and prevent the inevitable destructive impacts on adjacent wetlands.

The Policy

As used herein:

50-foot "No Build Zone" shall mean the 50-foot area adjacent to a wetland resource area where no new structures are permitted.

25-foot "No Disturb Zone" shall mean the 25-foot area adjacent to a wetland resource area where no alteration is permitted.

"Alteration" shall mean any vegetation, soils, or other removal, addition of soil, or disturbance of soil, vegetative cover, or other naturally occurring materials, including grading for new structures.

"Construction" shall mean the construction of any structure or building, including, without limitation, any residential or commercial building, garage, shed, barn, tennis court, deck, swimming pool, driveway, or landscaping project.

"Structure" shall include, but not be limited to, any new impervious surface such as buildings, sheds, garages, barns, tennis courts, swimming pools, and driveways.

In acting upon Notices of Intent and Determinations of Applicability, the NRC will presume that any new structures proposed within 50 feet of wetlands, and any alteration or construction within 25 feet of a wetland boundary, will have a significant adverse impact on the wetlands, and such proposals shall not be permitted unless the applicant demonstrates that (1) such activity would not have adversely affect the interests identified in the Act, or (2) public benefits, such as health or safety, outweigh any such alteration. The applicant shall have the burden of proof on this issue. Factors to be considered by the NRC in determining whether the applicant has met this burden shall include, but are not limited to, the following:

1. Slope of the buffer zone
2. Type and structure of vegetation in the buffer zone
3. Degree and scale of past alterations in the buffer zone
4. Ecological integrity of the adjacent wetlands
5. Importance of the buffer zone to wildlife utilizing the wetland
6. Whether the proposed buffer zone activity would be permitted if it were in a wetland
7. Any ecological benefits arising from the proposed activity, such as removal of invasive vegetation or creation of enhanced wildlife habitat
8. Any public benefits arising from the proposed activity

Applicants wishing to rebut the presumption set forth in this policy shall provide the NRC with the following information, together with any additional relevant information which the NRC may require:

1. A cross-sectional profile of elevation changes in any area of the buffer zone within 50 feet of a wetland that would be disturbed by the proposed activity
2. A list of vascular plant species in the 25-foot area of the buffer zone and adjacent wetland areas including data on relative abundance of each species
3. A wildlife habitat evaluation of the 25-foot area of the buffer zone and adjacent wetlands including data on observed wildlife utilization of such area, such as breeding bird use, occurrence of fish, reptiles, amphibians and mammals
4. A description of the nature of any public or ecological benefits which may arise from the proposed activities

It is the NRC's policy, where it has discretion, to prohibit any activity in the wetlands except where there are exceptional circumstances, where no other practical alternative exists, and where satisfactory replication takes place to mitigate any alteration. Activities identified in the WPA Regulations as minor activities [310 CMR 10.02(2)(b)(2)] will be given consideration as minor activities and exempt from the policy. All activity within the 100-foot buffer zone will continue to be reviewed on an individual case-by-case basis.

Adopted by unanimous vote of the Natural Resources Commission on May 20, 1994.
Amended by the Natural Resources Commission on July 13, 2007